

Before the
Administrative Hearing Commission
State of Missouri



STATE COMMITTEE OF PSYCHOLOGISTS,)

Petitioner,)

vs.)

ROBERT BRIGGS,)

Respondent.)

No. 02-0095 PS

CONSENT ORDER

The licensing authority filed a complaint. Section 621.045, RSMo 2000, gives us jurisdiction.

On January 17, 2002, the parties filed a "Joint Stipulation of Facts, Waiver of Hearing Before the Administrative Hearing Commission and State Committee of Psychologists and Consent Order With Joint Proposed Findings of Fact and Conclusions of Law." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under section 337.035.2(8), RSMo 2000. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order under Regulation 1 CSR 15-2.450(1)(B). We certify the record to the licensing agency under section 621.110, RSMo 2000.

No statute authorizes us to determine whether the agency has complied with the provisions of section 621.045.3. RSMo 2000. This is consistent with the holding that we have no role in superintending agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied.

SO ORDERED on January 22, 2002.


SHARON M. BUSCH
Commissioner

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

STATE COMMITTEE OF PSYCHOLOGISTS)
3605 Missouri Boulevard)
Jefferson City, MO 65102)

Petitioner)

v.)

ROBERT BRIGGS)
400 East Red Bridge Road)
Suite 212)
Kansas City, MO 64030)

Respondent.)

FILED
JAN 17 2002
ADMINISTRATIVE HEARING
COMMISSION

No. 02-0095PS

JOINT STIPULATION OF FACTS, WAIVER OF HEARING
BEFORE THE ADMINISTRATIVE HEARING COMMISSION AND
STATE COMMITTEE OF PSYCHOLOGISTS AND CONSENT ORDER
WITH JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission (1 CSR 15-2.450(1)) and pursuant to the terms of § 536.060, RSMo Supp. 1999, as it is made applicable to the Administrative Hearing Commission by § 621.135, RSMo 1994, the parties waive the right to a hearing of the above-styled case by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the State Committee of Psychologists under § 621.135, RSMo 1994, and jointly stipulate to the facts and consent to the imposition of disciplinary action against Respondent's psychologists license for violations of the statutes set forth below.

Respondent acknowledges that he has received and reviewed a copy of the

Complaint filed by the State Committee of Psychologists in this case and the parties submit to the jurisdiction of the Administrative Hearing Commission.

The Respondent acknowledges that he is aware of the various rights and privileges afforded him by law, including the right to appear and be represented by counsel; the right to have a copy of the complaint served upon him by the Administrative Hearing Commission prior to the entering of its order; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Respondent; the right to present evidence on Respondent's own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the complaint pending against Respondent; and the right to a ruling on questions of law by an administrative hearing commissioner. Being aware of these rights provided the Respondent by operation of law, the Respondent, Robert Briggs, knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation of Facts, Waiver of Hearing Before the Administrative Hearing Commission and State Committee of Psychologists and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law and agrees to abide by the terms of this document as they pertain to Respondent.

I

Based upon the foregoing, the Petitioner and the Respondent jointly stipulate to the following and request that the Administrative Hearing Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Administrative Hearing Commission's Findings of Fact and Conclusions of Law:

JOINT PROPOSED FINDINGS OF FACT

1. The State Committee of Psychologists ("Committee") is an agency of the state of Missouri created and established pursuant to § 337.050, RSMo 2000, for the purpose of executing and enforcing the provisions of Chapter 337, RSMo.
2. Robert Briggs ("Respondent") is licensed by the Committee as a psychologist, License No. PSY01164. Respondent's license is current and active and was so at all relevant times stated herein.
3. On November 2, 2000, the Board of Psychology Examiners of the state of Arizona filed an Administrative Complaint against Respondent alleging unprofessional conduct.
4. On February 26, 2001, Respondent and the Board of Psychologist Examiners for the state of Arizona entered into a Consent Agreement, Findings of Fact, Conclusions of Law and Order of Probation ("Order"). The Order is attached hereto and marked as Exhibit A.
5. The Order contains language which states that two patients of the Respondent alleged that he touched them sexually, which allegations the Respondent

denied and continues to deny. Moreover, according to the Order, Respondent failed to maintain and retain adequate business or professional records regarding the psychological services provided to a client.

6. Pursuant to the Order, Respondent's Arizona Psychology license was placed on probation for a period of three years.

JOINT PROPOSED CONCLUSIONS OF LAW

7. State regulation 4 CSR 235-5.030 Ethical Rules of Conduct, states in pertinent part:

(4)(C) Prohibited Dual Relationship.

1. The psychologist, in interacting with any current client or with a person to whom the psychologist at any time within the previous sixty (60) months has rendered counseling, psychological services for the treatment or amelioration of emotional distress or behavioral inadequacy, shall not-

3. Touching or caressing by either the psychologist or client of the other person's breasts, genitals or buttocks;

4. Engage in any deliberate or repeated comments, gestures or physical contact of a sexual nature that exploits the professional relationship with the client;

F. Exhibitionism and voyeurism-exposing one's self or encouraging another to expose him/herself for the purpose of sexual gratification.

8. State regulation 4 CSR 235-5.030 Ethical Rules of Conduct,

states in pertinent part:

5. Client Welfare

(C) Unnecessary Service. The psychologist shall not exploit clients by providing unnecessary psychological service.

9. State regulation 4 CSR 235-5.030 Ethical Rules of Conduct,

states in pertinent part:

2. Definitions

(E) Maintenance and Retention of Records

1. The psychologist rendering professional individual services to a client shall maintain professional records...

10. Violation of State Regulations 4 CSR 235-5.030 (4)(C), (5)(C), and (2)(E), provides grounds to revoke or suspend the license of a psychologist in the state of Missouri.

11. The Order in the state of Arizona is grounded on facts for which, if proven, revocation or suspension is authorized in the state of Missouri.

12. Cause exists to discipline Respondent's Psychologist license pursuant to § 337.035.2(8), RSMo 2000, which states, in pertinent part:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

- (8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state.

II

DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Committee in this matter under the authority of Section 621.110, RSMo 1994. This disciplinary order will be effective immediately upon the issuance of the Consent Order of the Administrative Hearing Commission without further action by either party:

14. Respondent's license number PSY 01164 is hereby placed on PROBATION for a period of three (3) years ("disciplinary period"). The disciplinary period will begin on the effective date of this joint stipulation. During the disciplinary period, Respondent shall abide by the following terms and conditions:

A. Respondent must inform Respondent's employers, and all hospitals, institutions, court systems and managed health care organizations with which Respondent is affiliated, that Respondent's work as a professional psychologist is under probation by the State Committee of Psychologists. (Respondent must obtain written verification of each patient/client that Respondent treats, evaluates or consults has been so informed).

B. Respondent shall send or cause to be sent a copy of the quarterly reports that he is required to submit to the state of Arizona. For purposes of this paragraph, quarterly reports refers to the reports regarding the psychotherapy that Respondent is required to undergo pursuant to paragraph 3 page 4 of the state of Arizona's Order. Said Order is attached hereto and marked as Exhibit A.

C. Respondent may not serve as a supervisor for any psychological trainee, psychological intern, psychological resident, psychological assistant, or any person undergoing supervision during the course of obtaining licensure as a psychologist, professional counselor, or social worker.

D. Respondent must keep the State Committee of Psychologists apprised at all times, in writing, of Respondent's current home and work addresses and telephone numbers.

E. Respondent is required to pay to the State Committee of Psychologists, in a timely fashion, all requisite fees required by law to renew and keep current Respondent's psychology license in Missouri.

F. Respondent is required to comply with all provisions of Chapter 337, RSMo, the rules and regulations duly promulgated by the State Committee of Psychologists and state and federal criminal laws.

G. Respondent must provide periodic reports of Respondent's compliance with this Joint Stipulation every three months. These reports must be received on or before January 1, April 1, July 1, and October 1 of each year.

H. At Respondent's expense, Respondent must agree to meet with the State Committee of Psychologists at reasonable intervals designated by the Committee.

15. In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation of Facts, Waiver of Hearing Before the Administrative Hearing Commission and the State Committee of Psychologists and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law and to the termination of any further proceedings before the Administrative Hearing Commission.

16. Respondent hereby waives and releases the Committee, its members and any of its employees, agents, or attorneys, including any former Committee members,

employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. 1983, which may be based upon, arise out of, or related to any of the matters raised in this litigation, or from the negotiation or execution of this joint stipulation. The parties acknowledge that this paragraph is severable from the remaining portions of this joint stipulation in that it survives in perpetuity even in the event that any court of law deems this joint stipulation or any portion thereof void or unenforceable.

17. Upon the expiration of the disciplinary period, Respondent's license as a psychologist in Missouri shall be fully restored, provided all provisions of this Joint Stipulation and all other requirements of law have been satisfied.

18. If the State Committee of Psychologists determines that Respondent has violated a term or condition of his discipline, or has otherwise failed to comply with the provision of Chapter 337 RSMo, which violation would be actionable in a proceeding before the State Committee of Psychologists or the Administrative Hearing Commission or a circuit court, the State Committee of Psychologists may elect to pursue any lawful remedies or procedures afforded to it, and is not bound by this order in the selection of remedies concerning such violation.

19. The parties to this Joint Stipulation understand that the State Committee of Psychologists will maintain this Joint Stipulation as an open and public record of the

Committee as provided in Chapters 337, 610, and 620 RSMo.

RESPONDENT

PETITIONER

Robert Briggs 12-31-01
Robert Briggs Date
Respondent

Pamela Goose 1-15-02
Pamela Goose Date
Executive Director

Andy Graham 12/31/01
Respondent's Attorney Date

JEREMIAH W. (JAY) NIXON
Attorney General
Ronald Smith 1/16/02
Ronald Smith Date
Assistant Attorney General
Missouri Bar No. 51195

7th Floor, Broadway State Office Building
221 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-1444
Telefax: 573-751-5660
Attorneys for Petitioner

EFFECTIVE THIS _____ DAY OF _____, 2001.

COPY

BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS

FOR THE STATE OF ARIZONA

ORIGINAL

In the Matter of

No. 00-17

Robert A. Briggs, Ph.D.,

CONSENT AGREEMENT,
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER OF PROBATIONHolder of License No. 3262
for the Practice of Psychology
in the State of Arizona

Robert A. Briggs, Ph.D. ("Licensee") and his attorney, Arly Richau, Esq., appeared before the Arizona Board of Psychologist Examiners ("Board") on February 3, 2001. Assistant Attorney General Nancy J. Beck represented the State of Arizona. Assistant Attorney General Thomas Dennis, Solicitor General's Section of the Office of the Attorney General, appeared as legal advisor to the Board. Pursuant to A.R.S. §§ 32-2081(F)(5) and 41-1092.07(F)(5), Licensee and the Board agree as follows:

CONSENT AGREEMENT

1. The Board and Licensee enter into this Consent Agreement in order to promptly and judiciously resolve a contested case, consistent with the public interest and the statutory requirements of the Board.

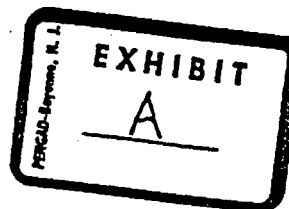
2. Licensee enters into this Consent Agreement for the purposes of this Board proceeding only. The Consent Agreement, Findings of Fact, Conclusions of Law, and Order of Probation shall not be construed as conclusive evidence of a violation for any other proceeding.

3. Licensee has consulted with an attorney prior to entering into this Consent Agreement.

4. Pursuant to A.R.S. §§ 32-2081(F)(4), -(5) and -(K)(3), and 41-1092.07(F)(5), the Board shall adopt the Findings of Fact, Conclusions of Law, and Order of Probation set forth below.

5. Licensee has read and understands this Consent Agreement, Findings of Fact, Conclusions of Law, and Order of Probation, and makes this agreement freely and voluntarily.

6. Licensee irrevocably waives his right to a hearing, rehearing, or judicial review.



7. This Consent Agreement and Order Probation shall be effective when signed by the Board's Executive Director. If the Board rejects the Consent Agreement and this matter proceeds to formal hearing, Licensee will assert no claim that the Board was prejudiced by its review and discussion of this Consent Agreement and Order of Probation, nor will this Consent Agreement be used in evidence in any formal hearing.

8. If this matter proceeded to an administrative hearing, the State of Arizona would present substantial evidence in support of paragraphs 1, 2, 3, 5, 7, and 8 of the Findings of Fact and paragraphs 1 through 3 of the Conclusions of Law, and would present the testimony of the clients in support of paragraphs 4 and 6 of the Findings of Fact. Licensee denies paragraphs 4 and 6 of the Findings of Facts and all Conclusions of Law.

9. This Consent Agreement, Findings of Fact, Conclusions of Law, and Order of Probation is a public record.

BOARD OF PSYCHOLOGIST EXAMINERS
OF THE STATE OF ARIZONA

Robert A. Briggs, Ph.D.

By

Maxine McCarthy
Maxine McCarthy
Executive Director

2/20/01
Date

2/26/01
Date

FINDINGS OF FACT

1. The Arizona Board of Psychologist Examiners ("Board") is authorized to regulate the practice of psychology in Arizona pursuant to A.R.S. §§ 32-2061, *et seq.*

2. Licensee is the holder of License 3262 for the practice of psychology in Arizona.

3. F.P., an adult female, saw Licensee for marital and individual psychotherapy beginning in mid-1999. During the time Licensee treated F.P., on multiple occasions, he touched, rubbed, and massaged F.P.'s shoulders, neck, and upper back.

4. According to F.P., during her last session with Licensee, he locked the office door, sat down next to her, and put his hands under her blouse, rubbing her upper and lower back and the sides of her torso. Further, according to F.P., Licensee instructed her to lean back on him, into his chest,

1 and whispering and trembling, he rubbed her breasts. F.P. regarded Licensee's conduct to be sexual
2 in nature.

3 5. F.P.'s relative, E.O., who suffered from migraine headaches and depression, first saw
4 Licensee for psychological services in early 2000. During the time Licensee saw E.O., on two
5 occasions, he massaged her neck and shoulders for at least ten minutes.

6 6. On E.O.'s last visit, Licensee locked the office door and sat down next to her.
7 According to E.O., after massaging her neck, telling her to relax and breathe, Licensee touched her
8 breasts. E.O. regarded Licensee's conduct to be sexual in nature.

9 7. Licensee also conducted sessions with E.O. on the telephone while she was in another
10 state. During one telephone session, Licensee asked E.O. where she was in the house and what she
11 was wearing. He told her to take off her shirt, get some baby oil or lotion, and massage her breasts,
12 stimulating the nipples. At the end of the conversation, Licensee indicated that the next time they
13 talked, he wanted her to repeat those actions and that they could go farther so she could have an
14 orgasm. In an investigational interview with Board staff, Licensee admitted that the phone session
15 about masturbation had occurred.

16 8. Licensee administered behavioral questionnaires or tests to both E.O. and F.P. He
17 scored the questionnaires or tests, and discussed the results with the clients. Licensee's records fail
18 to contain the test protocol, results, or findings.

19 CONCLUSIONS OF LAW

20 1. The Board of Psychologist Examiners of the State of Arizona possesses jurisdiction
21 over the subject matter hereof and Robert A., Briggs, Ph.D.

22 2. The conduct and circumstances described above constitute unprofessional conduct
23 pursuant to A.R.S. § 32-2061(A)(13)(o) (Engaging in activities as a psychologist that are
24 unprofessional by current standards of practice.)

25 3. The conduct and circumstances described above constitute unprofessional conduct
26 pursuant to A.R.S. § 32-2061(A)(13)(h) (Failing or refusing to maintain and retain adequate
27 business, financial or professional records pertaining to the psychological services provided to a
28 client.); A.A.C. R4-26-106(D) (All client records, including records of a client who has died while

1 under the care and treatment of the psychologist, shall be retained for a minimum of seven years
2 from the date of the last client activity. A psychologist who has been notified of an investigation or
3 pending case by the Board or municipal, state, or federal officials shall retain all records relating to
4 that investigation or case until the psychologist has received written notification that the
5 investigation has been completed or that the case has been closed.)

6 ORDER OF PROBATION

7 Based on the foregoing Consent Agreement, Findings of Fact, and Conclusions of Law, IT IS
8 ORDERED placing on probation for a period of three years, on the following terms and
9 conditions:

10 1. Licensee shall not touch any female client other than to shake hands.
11 2. For a period of six months beginning thirty days after the date of this Order, Licensee
12 shall not provide psychotherapy to any female.

13 3. Licensee shall undergo psychotherapy for a minimum period of one year with an
14 Arizona-licensed psychologist designated by Board staff, who shall have expertise in the matters
15 described in the Findings of Fact above. The therapy sessions shall be conducted in-person, at a
16 frequency and for a duration to be determined by the psychologist after evaluation, and shall address
17 boundary issues and such other issues as the therapist believes appropriate. Licensee shall cause the
18 therapist to timely submit quarterly written reports to the Board on or before the fifteenth day of
19 March, June, September, and December. Each report shall include at least a diagnosis, treatment
20 plan, progress report, and prognosis. Prior to beginning therapy, Licensee shall provide the therapist
21 with a complete copy of the Findings of Fact, Conclusions of Law, and Order of Probation.

22 4. A practice monitor who is an Arizona licensed psychologist approved by Board staff
23 shall monitor Licensee's practice regarding boundary issues and compliance with this Order.
24 Monitoring shall occur for one year following the date of this Order and for one additional year
25 following termination of psychotherapy by the psychotherapist not to exceed the term of probation.
26 Within ten days of the date of this Order, Licensee shall submit the names of at least three proposed
27 monitors to Board staff for approval. The practice monitor shall meet in person with Licensee at least
28 once per month to discuss all active cases. Licensee shall cause the practice monitor to provide

1 quarterly written reports to the Board on or before the fifteenth day of March, June, September, and
2 December regarding boundary issues and compliance with this Order.

3 5. Licensee shall bear all costs incurred regarding compliance with this Order, and shall
4 timely pay for all costs incurred.

5 6. Within one year of the date of this Order, Licensee shall reimburse to E.O. and F.P. and
6 their insurance carriers all fees paid for Licensee's services, and shall submit satisfactory evidence
7 of payment to the Board.

8 7. Within one year of the date of this Order, Licensee shall complete a minimum of 96
9 hours of community service approved by Board staff, and shall provide to the Board a log containing
10 a description of services, date, place, time, name of organization, and dated signature of a responsible
11 official or employee of the organization.

12 8. Licensee shall comply with all laws relating to the practice of psychology in Arizona.

13 9. Any material violation of this Order by Licensee shall, after notice and hearing, be
14 grounds for discipline of Licensee, including revocation of license.

15 10. Licensee shall not request modification or termination of this Order prior to February
16 1, 2003.

17
18 DATED this 26th day of February, 2001.

19
20 BOARD OF PSYCHOLOGIST EXAMINERS
21 OF THE STATE OF ARIZONA

22 By Maxine McCarthy
23 Maxine McCarthy
24 Executive Director

25
26 COPY of the foregoing mailed by certified mail
27 this 26th day of February, 2001 to:

28 Robert A. Briggs, Ph.D.
Address of record

1 COPY of the foregoing sent by regular mail
this 26th day of February, 2001 to:

2 Arly Richau, Esq.
3 Law Offices of Glynn Gilcrease, Jr.
4 1400 E. Southern Ave., Suite 425
5 Tempe, Arizona 85282
Attorneys for Dr. Briggs

6 COPY of the foregoing sent by regular mail
this 26th day of February, 2001 to:

7 Nancy J. Beck, Assistant Attorney General
8 Office of the Attorney General, Civil/LES
9 1275 West Washington
Phoenix, Arizona 85007

10
11 Marc Lucas
12 330084